

REMARKS

STATUS OF THE CLAIMS

Claims 1-35 were pending and were variously rejected under 35 U.S.C. §§ 102 and 103. By amendment herein, claims 15-18, 21, 22, 26-28 and 35 have been amended as shown above and new claims 36 and 37 have been added. Support of the amendments to the claims can be found throughout the specification as filed, for example, in paragraph [0024] (claim 15); paragraphs [0008], [0009], [0011], and [0024] (claims 16-18, 22); paragraph [0030] (claim 21); paragraphs [0022], [0026], and [0041] (claims 26, 27 and 35); and paragraph [0024] (claim 28). Claims 36 and 37 are supported at, for example, paragraphs [0044] and [0045]. No new matter has been added as a result of these amendments and entry thereof is respectfully requested. Applicants reserve the right to file one or more continuing applications directed to the subject matter of the original claims at any time during the pendency of this application.

SPECIFICATION

The specification has been amended as shown above to indicate that this application is a continuation of U.S. Serial No. 09/680,573, filed October 6, 2000, now U.S. Patent No. 6,592,223, issued July 15, 2003. Typographical errors on in paragraphs [0040] and [0041] (pages 7 and 8) have also been corrected as shown above. Entry of the amendments to the specification is respectfully requested.

INFORMATION DISCLOSURE STATEMENT

Submitted herewith is an Information Disclosure Statement and accompanying 1449 form. Consideration of the IDS is requested.

DRAWINGS

The Official Action has objected to the Drawings and has asserted that the “three light sensors” must be shown or the feature(s) cancelled from the claim(s). However, in light of the arguments presented herein and the fact that the positioning of the three light sensors is dependent on the source of multi-directional light entering the user’s eyes, it is not appropriate to fix the position of the three light sensors or require the position to be fixed as a necessary part of the invention. Applicants respectfully request withdrawal of this objection to the drawings.

CLAIM OBJECTIONS

The Official Action has objected to claim 18 because of a typographical error in the phrase “light in the and environment of the user.” (Official Action at page 2) Applicants have

corrected this error in the present claim and the word "and" has been deleted from this phrase. Applicants request withdrawal of this objection to claim 18.

35 USC §112, FIRST PARAGRAPH

The Official Action has rejected claims 26 and 27 under 35 USC §112, first paragraph, for failure to comply with the enablement requirement. The Official Action asserts "[t]here is no disclosure how three light sensors are positioned to determine the source of multidirectional light relative to the user." (Office Action at pages 2-3). Further, the Official Action asserts that the "utility of such arrangement is also not disclosed, which gives a rise to utility problem under 35 USC 101." (Official Action at page 3)

Applicants would first point out that one of the problems the present invention is designed to address is that "... many times the lighting in the room where the computer is located may not be optimal. This may lead to glare and other problems that also result in eyestrain." (Specification, at [0005]). Moreover, Applicants have further noted that: "Recent medical literature clearly shows an increase in eyestrain-related problems, especially in children. Use of computers is rapidly growing among children and improper use of computers is thought to be a contributing factor to the increase in eyestrain related problems in children." Hence, contrary to the assertion made in the Official Action, an arrangement that can reduce glare and reduce eyestrain definitely has utility. Accordingly, the Official Action's assertion of lack of utility is without merit. Withdrawal thereof is requested.

With regard to the position of the three light sensors, as recited in claims 26 and 27, Applicants would point out that they are "to determine the source of multidirectional light relative to the user," which will allow for "analysis of glare." (Specification, at [0040]) According to <http://members.aol.com/copernicanview/glare.htm>, "Three forms of glare are defined by the Illuminating Engineering Society of North America (IESNA)," the three forms being disability glare, discomfort glare and nuisance or annoyance glare. Disability glare "is caused by light scattered into the eye that shines on the retina and reduces the contrast of images that we would normally see clearly without the presence of glare." Discomfort glare "often occurs when encountering an area that has very high illumination levels." As an example, "Everyone who has gone outdoors on a sunny day at noon time has experienced discomfort glare." Nuisance or annoyance glare is "illumination that causes complaints as in the case of Light Trespass conditions. When light trespass occurs, the level of illumination often will not register on many luminance meters, but it is enough to read by or to keep a person awake, even when using room darkening blinds, shades and drapes."

Hence, to measure glare, a person of ordinary skill in the art would reasonably have known to position the sensors to measure the scatter light entering the eyes of the user from any

direction. For example, such light may include (1) light coming from behind the user but reflected by the display; (2) light coming from behind the display and directly entering the user's eyes; and (3) light from overhead lighting in a room. It is also possible to position the light sensors to measure light originating from a neighbor's table lamp, if appropriate. Thus, the position of the light sensors depends on the environment in which a user is placed and need not be fixed. It is axiomatic that a specification need not include information that is generally known. Applicants submit a person of ordinary skill in the art would be able to position the light sensors to achieve the desired result of measuring glare based on Applicants' teaching herein without undue experimentation. In light of this, the §112, first paragraph rejection is without merit. Applicants request withdrawal thereof.

35 USC §102

A. Rejection of claims 1, 3-6, 8, 10-14 and 18 under 35 USC §102(b) over Kuga

The Office Action has rejected claims 1, 3-6, 8, 10-14 and 18 under 35 USC §102(b) as allegedly anticipated by U.S. Patent No. 5,686,940 (hereinafter "Kuga"). The Office Action asserts, among other things, that with respect to claims 1 and 18, Kuga "discloses a computer system for monitoring the use of a display (1) by a user and having a display (1) performing a task (manipulating images, scrolling, zooming etc.); and a first sensor (2) positioned relative to display and being a distance light sensor." (Office Action at page 3, paragraph 6). The Office Action further asserts that: "Analysis of the measurement is output from a computer (5) to a driver circuit (6) for controlling the display (1) according to the detected distance." (Office Action at page 3, paragraph 6). As to claim 3, the Office Action asserts that "the display in Kuga's system is LCD." With respect to claims 4 and 11, the Office Action asserts that "the sensor is incorporated into a supporting structure of the display and placed on the top of the display," citing col. 2, lines 48-49. With respect to claim 5, the Office Action asserts that the "CCD is made of a plurality [of] light sensors (pixels)," citing col. 2, lines 49-55. With respect to claim 6, the Office Action asserts that "the sensor is the imaging sensor (CCD)." Further, with respect to claim 8, the Office Action asserts that "the system comprises a computer (5) for processing inputs from the sensor," citing col. 3, lines 29-43. With respect to claim 10, the Office Action asserts that the "sensor is positioned to monitor the display depending on the display distance from the user." With respect to claim 12, the Office Action asserts that "the user constitutes a remote input device," citing col. 4, lines 22-27, "by controlling various computer related tasks, such as scrolling or zooming, for example, by changing the distance between the display and the user." With respect to claim 13, the Office Action asserts that the "sensor is a distance sensor," citing col. 2, line 48. With respect to claim 14, the Office Action asserts that "the sensor is a light sensor," citing col. 2, lines 49-53.

Applicants submit that Kuga does not disclose all of the features of the presently claimed invention. In particular, without conceding the merits of any of the Office Action's rejections, the stated bases therefor, or the accuracy thereof, the Office Action has failed to show that Kuga discloses "a means to notify user when user is not at a proper viewing distance" as presently claimed, for example, in claim 1. Kuga is not concerned about "a proper viewing distance." Kuga relates to a system that "provide[s] a display apparatus . . . which display modes are changed without any input operation," (col. 1, lines 50-52), such that when the user "moves the upper half of his or her body forward or backward, the number of pixels which receive light from the face mainly including the skin-color component increases or decreases, so that the ratio of the number of pixels which detect skin-color component light to the total number of pixels varies. Thereby, the variation in distance between the LCD 1 and the upper half of the user's body is detected. Thus, by comparing an output of the distance sensor 2 with the predetermined value by the comparator 3, whether the upper half of the user's body is near the LCD 1 or far from the LCD 1 is detected. The microcomputer 5 makes a changeover between an enlarged image and a reduced image based on the output of the comparator 3." (Kuga at col. 3, lines 18-32). Further, Applicants submits that the Office Action's assertion as to claim 11 that Kuga's sensor is "placed on the top of the display" is inaccurate. Kuga merely discloses "a charged coupled device (CCD)," that "is placed on the LCD 1," without saying that the CCD is "on top" of the display. (Kuga at col. 2, lines 48-49).

Applicants also disagree with the Office Action's assertion that with respect to claim 12, the user constitutes a remote input device. Kuga's invention is intended to avoid use of any input device. Specifically, Kuga states: "An object of the present invention is to provide a display apparatus with which display modes are changed without any input operations." (Kuga at col. 1, lines 50-52) Kuga contends that "when the display modes are changed by such operations, delay is readily caused in the man to machine interface, and the operations themselves are complicated. In addition, the operations are sometimes very difficult for physically handicapped people."

In view of the fact that the Office Action has failed to show that Kuga discloses all of the features of the present invention, for example, as claimed in claim 1, and that the dependent claims 3-6, 8, 10-14 all incorporate the recitations of claim 1 directly or indirectly, Applicants respectfully submit that Kuga is defective as a §102(b) reference against these claims, and request withdrawal of this rejection.

Further, the Office Action has also failed to show that Kuga discloses the step of "allowing the light sensor to measure ambient light in the environment of the user" In contrast, as cited above, Kuga measures light emanating from the user." Hence, Kuga is inapposite. Withdrawal of Kuga as a §102(b) reference against claim 18 is also requested.

B. Rejection of claims 15 and 17 under 35 USC §102(b) over Fateh et al

The Office Action has rejected claims 15 and 17 under 35 USC §102(b) as allegedly anticipated by U.S. Patent No. 6,076,928 (hereinafter "Fateh"). Applicants assume that the inclusion of claim 18 in the body of paragraph 7 of the Office Action is an error because claim 18 is not included in the title of paragraph 7. Moreover, claim 18 refers to a light sensor and the Office Action has made no reference to Fateh disclosing a light sensor. If this assumption is erroneous, Applicants respectfully request an indication of how Fateh anticipates claim 18.

With regard to the rejection of claims 15 and 17, Applicants submit that Fateh is inapplicable as a §102(b) reference as the Office Action has failed to show that Fateh teaches all of the features of the claimed invention including, for example, the feature of "automatically receiving an analysis of the measurement, wherein the analysis of the measurement comprises a notice when user is not at a proper viewing distance" as presently claimed in claim 15. The Office Action also did not establish that Fateh teaches "providing a software program that is capable of automatically notifying the user of the measured distance or automatically notifying user when user is not at a proper viewing distance," as claimed in claim 17.

The Office Actions cites Fateh at col. 7, lines 7-15 and FIG. 12. Fateh discloses that: "Selecting the minimize/maximize button 362 opens up an ergonomic software window such as the window 370 shown in FIG. 12. The ergonomic software window 370 displays a view distance 372, a recommended viewer distance 374" (Fateh at col. 7, lines 8-11) In contrast, the present invention provides for "automatic" notification, which is "especially useful in work situation where almost continuous use of the computer is anticipated. For example, there might be a trend toward closer viewing as the length of time the computer is being used increases. In such a situation, this may indicate that a break is in order, and in a preferred embodiment of the present invention, the system would so notify the user." (Specification at [0009]). In such a continuous use environment, it would be awkward and inconvenient for a user to stop work periodically to open up a window as in Fateh to check the viewing distance.

Accordingly, in view of Fateh's failure to disclose all the features of the present invention, as provided in claims 15 and 17, Applicants submit that Fateh is inapplicable and request withdrawal of this rejection.

C. Rejection of claims 16, 22, 23, 25 and 28-31 under 35 USC §102(b) over NEC

The Office Action has rejected claims 16, 22, 23, 25 and 28-31 under 35 USC §102(b) as allegedly anticipated by JP 2000-098991 to NEC SOFTWARE LTD (hereinafter "NEC"). With respect to claims 16, 22, 23 and 25, the Office Action asserts that "NEC discloses a display system comprising a display (1); a first sensor (13) being a distance sensor and a second sensor (12) being a light (luminance) sensor." (Office Action at page 4, paragraph 8) With regard to

claim 28, the Office Action asserts that “the readings from sensors 12 and 13 (FIG. 1) are input into a computer (2), which controls the brightness and contrast based on the readings and setting criteria storage means (31) (paragraphs [0018-0023]).” The Action asserts that “The process is shown in flow-chart in FIG. 3, and it is inherent for a computer to run on corresponding to this chart software program.” With respect to claim 29, the Action asserts that “the computer system of NEC determines a user’s viewing distance from the output of the distance sensor (13).” With respect to claims 30 and 31, the Action asserts that the computer system of Sakai (i.e., NEC) “runs on software program accepting sensor input representing distance and light measurements over time.”

Applicants are not able to read and understand the Japanese application and cannot independently assess the accuracy of the assertions made in the Office Action. Further, it is not clear from the English abstract what is being disclosed. Without conceding the merits of the assertions in the Office Action, the bases therefor, and the accuracy thereof, Applicants submit that the Office Action has failed to show that NEC discloses an “automatic analysis of the measurement . . . , wherein the automatic analysis of the measurement comprises a notification when user is not at a proper viewing distance,” as presently claimed in claim 16, for example. Similarly, the Office Action has not shown that the NEC system disclosed “a means for automatically notifying user when user is not at a proper viewing distance,” as presently claimed in claims 22 and 28, for example. Claims 23 and 25 each depends from claim 22 and incorporates the recitations of claim 22. Claims 29-31 each depends from claim 28 and incorporates the recitations of claim 28. Hence, the arguments herein relating to claims 16, 22 and 28 apply equally to claims 23, 25, and 29-31. Accordingly, NEC is defective as a §102(b) reference. Withdrawal of this rejection is respectfully requested.

D. Rejection of claims 18 and 19 under 35 USC §102(b) over George

The Office Action has further rejected claim 18 and 19 under 35 USC §102(b) as allegedly anticipated by U.S. Patent No. 6,606,130 (hereinafter "George"). The Office Action has asserted that with respect to claim 18, George “discloses a method for determining a light setting for a user using a display using a light sensor (sensors S1-S8 in FIG. 1) positioned to a known position relative to the display, positioning the user in front of the display, and allowing the light sensor to measure light in the environment of the user, receiving an analysis of the measurement.” As to claim 19, the Office Action asserts that “George further teaches that the method comprises suggesting a change in light amount in the environment,” citing col. 5, line 55 – col. 6, line 10.

Applicants submit, in the first instance, that George is non-analogous art. George is concerned about “A projected image,” that is “composed of three scanning rasters which are

required to be in register one with the other on a viewing screen,” where the “precise overlay of the three projected images require adjustment of multiple waveforms to compensate for geometrical distortion and facilitate the superimposition of the three projected images” (George at col. 1, lines 15-20). The display screen in George is one for receiving an image from a “projection television display apparatus [that] comprises a display device with an image formed for projection.” (George at col. 1, lines 38-40). In contrast, the present invention provides for a display “for performance of a task,” as claimed in claim 18, for example. The Office Action has failed to show that George discloses a “display for performance of a task,” as presently claimed.

Moreover, the photo sensors in George measures light from the projected image, not ambient light in the environment of the user, as presently claimed. The Office Action has not shown that George discloses a light sensor that measures “ambient light in the environment of the user” as in claim 18. More specifically, George states that the plurality of photo sensors is “located adjacent to edges of the display screen and each generates an output signal responsive to an intensity of illumination by the projected image.” (George at col. 1 at lines 38-40). “A detector with controllable detection threshold is coupled to the photo sensors for generating a signal having a first state when the output signal generated by each of the plurality of photo sensors is greater than the detection threshold, and a second state when the output signal generated by each of said plurality photo sensors is less than the detection threshold In response to the signal having the first state, the controller moves the image on the display device to sequentially illuminate another one of the plurality of photo sensors.” (George at col. 1, lines 43-56) It is clear from this description that the Office Action’s assertion that George discloses “allowing the light sensor to measure light in the environment of the user” is incorrect. In addition, the Office Action has failed to show that George teaches “positioning the user in front of the display in order to perform a task using the display,” also as presently claimed.

Claim 19 depends from claim 18 and incorporates all the recitations of claim 18. The defects in George as a §102(b) reference for claim 18, as discussed above, hold true for claim 19 as well. Because George is non-analogous art and because George is defective as a §102(b) reference, Applicants respectfully request withdrawal of the rejection over claims 18 and 19.

E. Rejection of claim 21 under 35 USC §102(b) over Jeon

The Office Action has rejected claim 21 as allegedly anticipated by U.S. Patent No. 5,877,841 (hereinafter “Jeon”). It asserts that Jeon discloses a method for testing a user’s vision “using a display comprising positioning a user in front of the display, displaying a test pattern (citing col. 50-65 and FIGS. 8A-H) according to an acuity test, selecting a test result (by user’s response to his/her perception of the pattern (characters of different sizes or Landolt circles), and

receiving an analysis of test result (notifying the user of measured eyesight, see claim 14 of Jeon).” (Office Action at Page 5, paragraph 10)

The Office Action, however, has failed to show that Jeon teaches the conduct of a test for amplitude of accommodation (see, for example, specification at [0027]) or a color test (see, for example, specification at [0028]) or an acuity test which comprises “showing a first position of “C” on the display, allowing the user to provide input into the system upon detection of the first position of “C,” providing rotation of “C” randomly to generate a second position of “C,” allowing the user to provide input into the system upon detection of the second position of “C” (see, for example, specification at [0022]), as presently claimed in claim 21. The eye test in Jeon comprises “Landolt Circles and letters of predetermined size” (Jeon at col. 5, lines 54-55) Thus, in Jeon, in the conduct of the eye exam, “a numeral (any one of 0 to 9) or a letter of predetermined size corresponding to the eyesight level of 1.0 is displayed on the screen If the user inputs the same numeral or letter as displayed on the screen by pressing the keys on the remote controller 3, the control section 5 detects the data inputted by the user. If the input data differs from the numeral or letter displayed on the screen, the control section 5 displays a numeral or letter corresponding to the one-level lower eyesight. If the input data is identical to the numeral or letter displayed on the screen, the control section 5 displays a numeral or letter corresponding to the one-level higher eyesight.” (Jeon at col. 6, lines 1-12). Thus, the acuity test of Jeon is different from the acuity test presently claimed. In view thereof, Jeon is not relevant to the present claim 21. Withdrawal of the §102(b) rejection on the basis of Jeon is respectfully requested.

F. Rejection of claims 26, 27 and 35 under 35 USC §102(b) over Pan

The Office Action has rejected claims 26, 27 and 35 as allegedly anticipated by U.S. Patent No. 5,367,315 (hereinafter “Pan”). It asserts, with regard to claim 26, that “Pan discloses a system comprising a display used by a user; a first sensor (one of the infrared sensors 23 and FIG.2) positioned close to the display and being a light sensor, a second sensor distinct from the first sensor (any other light sensor 23), and a third sensor distinct from the first and second sensors (any other than the first and the sensor light sensors 23).” (Office Action at Page 6) With regard to claim 27, the Office Action asserts that “Pan discloses multiple light sensors (23) that are capable to determine a source of multi-directional light relative to the user (the light emitted by multiple light transmitters 22 and reflected back by user’s head or body to the sensors 23).” As to claims 35, the Office Action asserts that “Pan discloses a software program for processing inputs from sensors and for displaying test patterns on the display,” citing col. 7, lines 41-45).

Pan is not relevant to the present claim 26 or claim 35, which recite that “if the first sensor is a distance sensor, the second sensor is a light sensor or if the first sensor is a light sensor, the first sensor is a distance sensor; and a third sensor distinct from the first sensor and the second sensor, and is other than a distance sensor or a light sensor.” The Office Action has failed to show that Pan discloses anything other than light sensors.

Pan has further failed to disclose sensors that are “positioned to determined a source of ambient multidirectional light relative to the user,” as claimed in claim 27. On the contrary, Pan “utilizes infra-red light transmitted into a defined area or sector within which the user’s head will normally be located and moved about during operation of the computer Changes in the eye position of the user are determined by the amplitude of the infrared light reflected from the user’s eyes and face and detected by multiple sensors positioned near the computer monitor. The signals detected by the sensors are compared to derive the moving direction of the eyes and head which information is then utilized to control the cursor movement.” (Pan at col. 2, lines 40-52) Thus, the system of Pan will not function properly if the sensors are directed towards detecting ambient light versus light reflected from the user’s eyes.

Moreover, the Official Action has failed to show that Pan teaches displaying a test pattern. The language cited by the Official Action, col. 7, lines 41-45 merely states that the system disclosed “permits the eyes to be used to control cursor movement in conjunction with any software, whether that be graphic displays, icon selection, menu choices, spread sheet, word processing, video games, etc.”

Accordingly, Applicants submit that Pan is inapposite to the present claims 26, 27 and 35, and request withdrawal of this rejection.

G. Rejection of claims 32-34 under 35 USC §102(b) over Wawro

The Official Action has further rejected claims 32-34 as allegedly anticipated by U.S. Patent No. 5,838,424 (hereinafter "Wawro"). The Action asserts, with regard to claim 32 that “Wawro discloses a system for eye examination comprising a display (CRT 54); a first sensor (74) positioned close to the display and being a light sensor (col. 6, lines 56-64); and a software program for processing inputs from the sensor and for displaying a test pattern on the display,” citing col. 3, lines 38-55; col. 5, line 58 – col. 6, line 31. As to claim 33, the Official Action asserts that “the test pattern can be an acuity test or a visual field test etc.,” citing col. 3, lines 45-55. As to claim 34, the Action asserts that “Wawro teaches a second sensor (76) distinct from the first sensor (74).”

The Official Action’s assertions are without merit. The sensors in Wawro are position sensors “for detecting the position of view port casing 26. When chassis 32 is in a first active position in relation to base frame 30, first position detector is directly opposite activating surface

78 so that the position detector 74 emits an “on” state signal indicative of the chassis being in a first active position.” Similarly, “When chassis 32 is in a second active position in relation to base frame 30 position detector 76 is positioned directly opposite second activating surface 81 so that detector 76 emits an “on” state signal indicative of the chassis being in a second active position.” (Wawro at col. 6, line 63 – col. 7, line 6) In contrast, the distance sensor of the present invention is “for monitoring the actual distance of the user” from a display (see, for example, specification at [0008]) and the light sensor is for measuring “ambient light in the user’s environment” (see, for example, specification at [0011]). The Official Action has failed to establish the Wawro teaches the use of a distance sensor or light sensor as presently claimed in claims 32 and 34. Moreover, claim 33 is dependent from claim 32 and incorporates the recitation of claim 32. Thus, the foregoing arguments as they pertain to claim 32 apply equally to claim 33.

In view of the failure of Wawro to disclose all the features of the claimed elements in claims 32-34, Applicants submit the Wawro is defective as a §102(b) reference, and request withdrawal of this rejection.

35 USC § 103

A. Kuga in view of Richardson et al. (US 6,433,759)

The Official Action has rejected claims 2, 7 and 9 under 35 USC §103 as being unpatentable over Kuga in view of Richardson (“Richardson,” US 6,433,759 B1). The Action admits that “Kuga does not disclose a communication link between the system and a computer system accessible by hypertext protocol, or that the sensor is connected to the system through a cable and capable of monitoring blink rate.” (Official Action at Page 7). Yet, it asserts that “It would have been obvious to one of ordinary skill in the art at the time when the invention was made to modify the system of Kuga by the teachings of Richardson by adding the ability to detect a blink rate, since Kuga lends itself conveniently to incorporating this feature by already having built-in imaging sensor for detecting a distance, because it would allow to emulate “mouse clicks” and provide additional instructions to the computer,” citing Richardson; col. 4, lines 43-46; col. 13, lines 17-62.

Applicants respectfully submit that this rejection is without merit. The Official Action has failed to establish a suggestion or motivation to modify Kuga in view of Richardson, a necessary step for combining references for a §103 rejection. Failing this, this §103 rejection cannot stand. Moreover, the focus of Kuga’s invention is on “varying an image signal supplied to the display panel based on the distance detected by the distance sensor” as a means of controlling the displayed image (Kuga at col. 1, lines 53 – 58). Richardson, on the other hand, is trying to improve head tracking or gaze point tracking (i.e., gaze of the eye) (Richardson, at col. 1, lines 14 – 16 and 38 – 40). These are two totally different inventions. Lacking any suggestion

or motivation to combine these two references, the presently claimed invention cannot be considered as having been rendered obvious thereby.

Accordingly, this §103 rejection must fall. Applicants request withdrawal of this rejection.

B. Fateh et al. (US 6,076,928) in view of Jeon (US 5,877,841)

Claim 20 has been rejected by the Official Action under 35 USC §103 as being unpatentable over Fateh in view of Jeon. The Official Action admits that “Fateh does not disclose that the displaying of recommended viewing distance is based on query and response to the query.” However, it asserts that “It would have been obvious to one of ordinary skill in the art at the time when the invention was made to provide Fateh with the test ability of Jeon, because it would allow Fateh to display recommended distance for viewing a display, by optimizing this distance value based on the test performed by Jeon, wherein a user’s perception is measured based on the distance, i.e., to include the user’s vision acuity as a factor into a recommendation” (Official Action at Page 8).

As pointed out in the previous §103 rejection, the Action’s ground for rejection is fatally flawed because it has failed to establish a motivation or suggestion for combining the asserted references. The Official Action is merely engaged in hindsight reconstruction of Applicants’ invention, an exercise that has been prohibited by the courts. In the absence of a motivation or suggestion to modify Fateh with Jeon as asserted, this §103 rejection cannot stand. Applicants request withdrawal of this rejection.

C. NEC

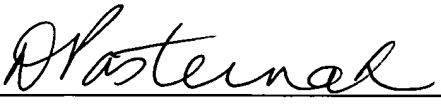
The Official Action has further rejected claim 24 under 35 USC §103 as being unpatentable over NEC. The Official Action admits that “NEC does not disclose that the second sensor is incorporated into a first sensor” Yet, it still asserts that “it would have been obvious to one of ordinary skill in the art at the time when the invention was made that the two sensors have to be positioned close in order to perform the above measurements and therefore ‘the constituent parts can be so combined as to constitute a unitary whole,’ i.e., to make these parts integral.” (Official Action at Page 8)

Claim 24 is dependent from claim 22 and incorporates all the recitation of claim 22. As discussed above, NEC does not disclose all of the features of claim 22 and is not a proper §102 reference against claim 22. The same argument applies to claim 24. NEC does not disclose and hence would not have suggested all of the features of claim 24, NEC is, therefore, defective as a reference for rejection of claim 24. NEC, in fact, discloses a separate “illuminance sensor 12,” and “a distance sensor 13” as two separate elements in the English Abstract.

In view of the foregoing, Applicants submit that NEC is defective as a §103 reference and request withdrawal of this rejection.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the claims are now in condition for allowance and request early notification to that effect.

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